

I. REAL PARTIES IN INTEREST

The statement identifying the real parties in interest is contained in the Appeal Brief and there are no changes in this Reply Brief.

II. RELATED APPEALS AND INTERFERENCES

The statement regarding other appeals or interferences is contained in the Appeal Brief and there are no changes in this Reply Brief.

III. STATUS OF THE CLAIMS

The status of the claims is contained in the Appeal Brief and there are no changes in this Reply Brief.

IV. STATUS OF AMENDMENTS

No amendments have been filed since the Examiner's final rejection.

V. SUMMARY OF THE INVENTION

The summary of the invention is provided in the Appeal Brief.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection are provided in the Appeal Brief. No new or alternate grounds of rejection were presented in the Examiner's Answer.

VII. RESPONSE TO EXAMINER'S ANSWER

A. CLAIMS 1-8, 14, AND 15 WERE IMPROPERLY REJECTED

1. References Relied Upon For Rejection

In the final rejection under 35 U.S.C. § 103, the Office Action rejected claims 1-8, 14, and 15 as being unpatentable over U.S. Patent No. 5,148,936 (DeGrow) in view of U.S. Patent

No. 6,745,505 (Moran). The Office Action rejected claims 9-13 as being unpatentable over DeGrow in view of U.S. Patent 6,311,860 to Reidinger. These references are summarized in the Appeal Brief and thus will not be discussed in further detail herein. Further, the rules regarding the establishment of a *prima facie* case of obviousness are set forth in the Appeal Brief as well. Of the rejected claims, only claim 1 is an independent claim.

In the present case, the rejection is improper, and fails to establish a *prima facie* case of obviousness, because the invention, as claimed, includes limitations that are neither taught nor suggested in any combination of the cited references.

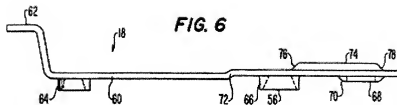
2. The “stopper member 18” of DeGrow, is not a “plate”

DeGrow fails to recite the plate and projection as recited in independent claim 1. For this Reply Brief, the following limitations of claim 1 are not found in DeGrow and are reiterated for clarity:

- “a plate with an upper surface, [and] a lower surface”
- “a plate with ... a projection”
- “the plate being sized such that at least a portion of the plate extends radially beyond a top edge of the lid when the seal is attached to the lid”

The stopper member 18 of DeGrow, in its entirety, is not structurally equivalent to a plate. In the mechanical arts, the term plate is defined as “a flat structural element only carrying point or distributed loads normal to its plane. Additionally it can transmit bending moments about axes lying in its plane.” (<http://en.wikipedia.org/wiki/Plate>).

The stopper member 18 of DeGrow, at the most, is a combination of plates connected together with steps or shoulders as best seen in Figure 6, which is provided below:



DeGrow teaches that the stopper member 18 includes at least three plates. The first plate is the handle 62 joined by a vertical step to a lowermost plate or arm 60, which includes the depending flange 64. The arm 60 is joined to a third plate through a vertical offset 72. The third plate is distally located from the handle 62, includes the lug 56 and the boss 68, and is shown as the rightmost portion of the stopper member 18 in Figure 6.

Importantly, DeGrow teaches that the purpose of the vertical offset 72 is “to restrict the flexibility of the arm 60 to the region adjacent its free end which carries the sealing flange 64, the upper surface of the arm is provided with an elongated stiffening rib 74. The rib 74 extends along the longitudinal axis of the arm 60 with its forward end 76 positioned substantially over the axle lug 54 and its rear end 78 spaced slightly inwardly from the rear end of the arm. Accordingly, by stiffening the stopper member 18 in this region any flexure imparted to the free end of the arm 60 when the handle 66 is lifted will not be propagated sufficiently to the axle lug 56 to break its connection with the body portion 16” (column 4, lines 35-47). Thus, DeGrow expressly teaches that the stopper member 18, in its entirety, does not and cannot function as a plate because the intermediate steps do not allow the stopper member 18 to transmit bending moments about axes lying in a single plane. Accordingly, the handle 62, the arm 60, and the third plate, when viewed in their entirety, are not the structural equivalent of a single plate.

Even assuming *arguendo* that the arm 60 of the stopper member 18 could be viewed as a discrete plate, it must be appreciated that the arm 60 does not meet the other limitations of

independent claim 1. In particular, there is no portion of the arm 60 of that bears the projection recited in the claims and “extends radially beyond a top edge of the lid when the seal is attached to the lid.” Figure 1 of DeGrow clearly indicates that the arm 60 bearing the sealing flange 64 does not extend beyond the top edge of the closure cover 14 (*i.e.*, lid).

The devices of Moran and Reidinger et al. fail to teach, suggest, or provide any motivation to modify the stopper member 18 of DeGrow from three separate and distinct, non-planar members to a plate having a projection as defined by claim 1. Moran discloses only twist on bottle lids. Reidinger discloses only a disposable cup lid with a game piece secured to the lid beneath a peel-away cover.

In viewing the stopper member 18 of DeGrow with respect to the term “plate” as understood in the mechanical arts, it is clear that DeGrow does not disclose, teach, or suggest the features of claim 1. In addition, Moran and Reidinger do not add anything that would teach one skilled in the art to substantially modify the device of DeGrow to achieve Applicants’ claimed invention. Consequently, the rejection under §103(a) was therefore improper because the above-mentioned limitations in independent claim 1 are not taught or suggested in the prior art references of DeGrow, Moran, and Reidinger, either singularly or in any selected combination.

Claims 2-8, 14, and 15 depend from claim 1. For the purpose of this appeal, the Applicants will rely on the arguments above and the arguments presented in the Appeal Brief with respect to claim 1, and contend only that they should not have been rejected because they depend from claim 1, which is an allowable base claim.

B. CLAIMS 9 - 13 WERE IMPROPERLY REJECTED

Claims 9-13 depend from claim 1. For the purposes of this appeal, Applicants will rely on the arguments above and the arguments presented in the Appeal Brief with respect to claim 1, and contend only that dependent claims 9-13 should not have been rejected because they depend from allowable claim 1.

VIII. CONCLUSION

For the foregoing reasons, the Examiner's final rejections should be reversed and the pending claims should be allowed.

Respectfully submitted,

BLACK LOWE & GRAHAM^{PLLC}

A handwritten signature in black ink, appearing to read "Lawrence D. Graham", written over the printed name.

Lawrence D. Graham
Registration No. 40,001
Direct Dial: 206.381.3304